

CHAPTER VIII

LEVY AND SALE - PERSONAL PROPERTY

The county treasurer has the duty to enforce the collection of delinquent personal property taxes, including taxes on mobile homes.

Annually, after November 10 and prior to the first day in August of the succeeding year, each treasurer shall serve a written demand by registered or certified mail, delivered in person by the treasurer or by the deputy, or by proof of certificate of mailing, upon every resident of the county who has not paid the personal property tax. The demand shall contain a statement that the taxpayer is delinquent in the payment of taxes, the amount of the delinquency with the penalties and the cost of the demand, and that if such amount is not paid within thirty (30) days from the date of the demand sufficient personal property of the taxpayer shall be sold to satisfy such amount or that a judgment may be entered against him/her in the circuit court as provided in IC 6-1.1-23-9. The demand must be signed by the county treasurer or a designee of the county treasurer. [IC 6-1.1-23-1]

DEMAND FEE AND FEES OF TREASURER

The treasurer shall charge and collect from each delinquent taxpayer the following fees:

1. For making a demand by:
 - A. registered or certified mail, eight dollars (\$8.00); or
 - B. any other matter permitted by section 1 of this chapter, five dollars (\$5.00).
2. For making a levy, ten dollars (\$10.00).
3. For selling personal property, ten percent (10%) of the sale price.
4. For advertising a sale, the legal rates for advertising.
5. For transfer and storage of personal property, the actual expense incurred.
6. Other reasonable expenses of collection, including:
 - A. title search expenses;
 - B. uniform commercial code search expenses; and
 - C. reasonable attorney's fees or court costs incurred:
 - i. in the collection process;
 - ii. due to a court order; or
 - iii. due to an order of the treasurer under IC 6-1.1-23-10.

The fees collected are the property of the county and shall be deposited in the county general fund. The collection expenses incurred in connection with the levy upon and sale of personal property shall be paid from the county general fund without prior appropriation.

CONTRACT WITH AGENT FOR COLLECTION

A county treasurer may enter into a contract, subject to the approval of the county executive, for services that the county treasurer considers necessary for:

1. the administration of IC 6-1.1-23; or
2. the collection of delinquent personal property taxes.

If delinquent personal property taxes are collected under a contract entered into under IC 6-1.1-23-1.5, the county treasurer may collect from the person owing the delinquent taxes a reasonable collection fee.

LEVY BY TREASURER

If the delinquent taxes with penalties and costs of the demand are not paid within thirty (30) days from the date of the demand, the treasurer shall proceed to levy upon sufficient personal property of the taxpayer to pay such amount, and to sell the same as hereinafter provided.

The treasurer shall levy upon the personal property within the meaning of this act by calling upon the delinquent taxpayer at his/her residence or place of business and making a duplicate list of all of his/her personal property, one copy of which he/she shall keep and the other of which he/she shall deliver to the delinquent taxpayer. The treasurer may require the delinquent taxpayer to give a list under oath of all the personal property owned by him/her, and the names of the owners of other personal property in his/her possession. If the delinquent taxpayer fails to provide such list, the treasurer shall file a petition in the circuit court of the county setting forth the facts and such circuit court shall order the delinquent taxpayer to provide the list.

The personal property included in the levy shall be appraised by the treasurer and it shall be subject to sale for the payment of the delinquent taxes, penalties and costs without further notice to the delinquent taxpayer. [IC 6-1.1-23-2]

POSSESSION OF PROPERTY AFTER LEVY

When the treasurer levies upon personal property, he/she may take immediate possession of sufficient personal property to pay the delinquent taxes, penalties and costs of the demand, and store it in some secure place. The treasurer may, however, leave the personal property in the custody of the delinquent taxpayer until the day of the sale. [IC 6-1.1-23-3]

BOND OF TAXPAYER WHO RETAINS CUSTODY

If the personal property is left in the custody of the delinquent taxpayer, he/she shall give to the treasurer a joint and several delivery bond, with a surety acceptable to the treasurer, payable to the State of Indiana in an amount equal to at least the amount of the delinquent taxes, penalties and costs of the demand, on the condition that the personal property will be delivered at the time and place designated by the treasurer to be sold at public auction, or that the obligor will, prior to the time of such sale, pay the treasurer the amount of the delinquent taxes, penalties and costs of the demand and levy. [IC 6-1.1-23-3]

FORM OF BOND

The bond above provided shall be in the following form:

We, A, as principal, and B, as surety, are jointly and severally bound unto the state of Indiana in the penal sum of _____ (_____) on the following condition:

Whereas, C, as treasurer of _____ County, has this day levied upon the following personal property, (here list such property), of the value of _____ (_____) to satisfy the delinquent taxes, penalties, and anticipated collection expenses for the year (s) _____ due from said A. Now if A shall deliver the said personal property to C at _____ o'clock (A.M. or P.M.) of the _____ day of _____, 19____, at the place designated by C to be sold to pay the delinquent taxes, penalties, and anticipated collection expenses, then this bond shall be void, else in full force.

Witness our hands and seals _____ (date) _____

A

B

C

Approved by me _____ (date)

Treasurer of _____ County

[IC 6-1.1-23-3]

NOTICE OF TIME AND PLACE OF SALE

The treasurer after levy shall give ten (10) days notice of the sale of such personal property by posting one (1) notice at a public place of posting in the court house, and by giving notice by publication one (1) time. (In two newspapers) Such notice shall fix the time and place of sale and shall list the personal property to be sold. [IC 6-1.1-23-4]

SALE AT AUCTION - RECORD OF SALES - DISTRIBUTION OF PROCEEDS

If prior to the time of the sale of such personal property, the delinquent taxes, penalties and costs are not paid, the treasurer shall sell sufficient personal property of the taxpayer to pay such delinquent taxes, penalties and costs of the demand, together with the cost of the sale.

Such sale shall be at public auction to the highest bidder at the place and time designated in the notice of sale. The treasurer shall keep a record of all sales in such form as may be prescribed by the State Board of Accounts.

The proceeds of the sale shall be paid into the county treasury and applied as follows:

First, to the collection expense;

Second, to the payment of the delinquent taxes, penalties and costs of the demand;

Third, to the payment of other tax delinquencies set forth in the order provided in subsection (b),
IC 6-1.1-23-5;

Fourth, any balance remaining shall be paid to the delinquent taxpayer. [IC 6-1.1-23-5]

HOUSEHOLD GOODS - EXEMPTION FROM LEVY AND SALE

Notwithstanding any other provisions of this article, the household goods of any person, up to the value of six hundred dollars (\$600.00), shall be exempt from levy and sale. The value of such household goods shall be determined by the treasurer. If the taxpayer disputes such value, it shall be the duty of the county assessor to view the property and fix the true cash value thereof and the value so fixed shall be binding upon the treasurer and the owner of the property. [IC 6-1.1-23-6]

DELINQUENT TAXPAYER ABOUT TO REMOVE PROPERTY FROM COUNTY - LEVY AND SALE

Whenever the treasurer has reason to believe that any person liable for delinquent personal property is about to take the property from the county without payment of such taxes, he/she may levy upon and sell sufficient personal property of such person to pay such taxes in the manner as provided in this article, except that it shall not be necessary to make a demand required in IC 6-1.1-23-1. [IC 6-1.1-23-8]

DELINQUENT TAX RECORD - FILING - JUDGMENT - INTEREST

In the year following any year in which a delinquency in the payment of any installment of taxes on personal property has occurred, and a demand for payment has been made pursuant to IC 6-1.1-23-1, and any amount for which demand was so made remains unpaid after sixty (60) days from the date of said demand, the treasurer shall prepare a record of all such delinquencies. The record shall state the name of the taxpayer who is personally liable for the taxes as shown by the tax duplicate, the last known address of the taxpayer, the date when the last installment of tax included therein became delinquent and the amount of all taxes, penalties and costs for which demand had been made and which remains unpaid. The record provided shall be in form prescribed or approved by the State Board of Accounts.

The treasurer shall swear to the accuracy of the record prepared by him/her before the clerk of the circuit court. The treasurer shall thereupon deposit the record in the office of the clerk of the circuit court. On and after deposit of such record in the office of the clerk of the circuit court, the amounts of delinquent taxes, penalties and costs stated therein shall constitute a debt of the person named, which debt shall in all respects have the same force and effect as judgments. [IC 6-1.1-23-9]

The judgments so entered shall be in favor of the county for the benefit of all taxing districts having an interest therein.

EXECUTION ON JUDGMENTS

If a judgment entered under IC 6-1.1-23-9 is not paid, the county treasurer may notify the delinquent taxpayer by certified mail that a judgment has been entered against him and that the treasurer is going to file a praecipe for execution. If the judgment is not paid within ten (10) days after the date the notice is given, the county treasurer shall file the praecipe for execution. If this notice is not given, an execution upon the judgment is invalid.

If a judgment has been entered against a taxpayer the county treasurer may obtain a court order restraining the taxpayer from transacting business in the county. However, the restraining order may be dissolved if the court believes that dissolution of the restraining order will make collection of the judgment more likely.

If a judgment against a taxpayer has not been satisfied within sixty (60) days after the judgment is entered, the county treasurer may do the following without judicial proceedings:

1. Levy upon property of the taxpayer that is held by a financial institution. The county treasurer shall make a levy under IC 6-8.1-8-8. A financial institution that receives a claim shall

- transfer to the county treasurer property of the taxpayer that is held by the financial institution. However, if the value of the taxpayer's property held by the financial institution is greater than the amount of the judgment, the financial institution shall transfer property of the taxpayer in an amount equal to the amount of the judgment.
2. Garnish the accrued earnings and wages of the taxpayer by giving notice to the taxpayer's employer. An employer who receives a notice under this subdivision shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount subject to garnishment under IC 24-4.5-5-105. The employer:
 - A. shall remit the amount garnished to the county treasurer; and
 - B. is entitled to a fee equal to the amount of the fee that may be collected under IC 24-4.5-5-105(5) in a garnishment action. However, the taxpayer shall pay the entire fee collected under this clause.
 3. Withhold the amount of the judgment in full or in part from any payment that:
 - A. is due to the taxpayer from the county; and
 - B. requires the signature of the county treasurer.

The treasurer of a county may use any combination of remedies provided under IC 6-1.1-23-10 for collection of delinquent taxes and expenses incurred under IC 6-1.1-23-7(a)(1) through IC 6-1.1-23-7(a)(6).

INTEREST

From the date of deposit of the record in the office of the clerk of the circuit court, the judgments shall bear interest at the same rate as other judgments and such interest shall be in lieu of other penalties which would have otherwise accrued on the taxes. [IC 6-1.1-23-9]

The interest rate to be charged on tax judgments is:

For the period prior to and including September 2, 1971 - Six Percent (6%)
 For the period September 3, 1971 through December 31, 1981 - Eight Percent (8%)
 For the Period January 1, 1982 through June 30, 1988 - Twelve Percent (12%)
 For the period July 1, 1988 through December 31, 1993 - Ten Percent (10%)
 On or After January 1, 1994 - Eight Percent (8%)
 [IC 24-4.6-1-101]

On the date the treasurer deposits the record in the office of the clerk, the treasurer shall make an entry on the tax duplicate in an appropriate column headed "certified to clerk of circuit court." Payment of delinquent tax judgments shall be made to the treasurer.

PROPERTY IN ANOTHER COUNTY

The treasurer of a county in which a judgment is entered under Section 9 [IC 6-1.1-23-9] of this chapter shall send a certificate of the judgment to the treasurer of another county and to the State Board of Tax Commissioners if the treasurer determines that:

1. The delinquent taxpayer does not have, in the county in which the judgment is entered, property of sufficient value to satisfy the judgment; and
2. The delinquent taxpayer does have property in the other county.

A treasurer who receives a certificate of judgment shall have the judgment indexed in the judgment docket by the clerk of the circuit court of the county the treasurer serves. The treasurer shall proceed to have execution issued upon the judgment in the same manner as if the judgment had been originally entered in the county he/she serves.

The State Board of Tax Commissioners shall make periodic audits of the records of the treasurers to insure compliance with the provisions of this section. [IC 6-1.1-23-11]

SETTING ASIDE JUDGMENTS - GROUNDS

Any judgment entered as provided in IC 6-1.1-23-9 and 6-1.1-23-11 may be set aside only for one (1) of the following reasons:

1. That the person against whom such judgment is entered was not liable for the delinquent taxes, penalties and costs for which such judgment was entered.
2. That such amount has been paid either in whole or in part. If a part only has been paid, the judgment shall be set aside only in the amount of such payment.
3. That the notice required in IC 6-1.1-23-1 was not given as therein specified.
4. The person against whom the judgment was entered is deceased, as evidenced by a certificate of death.
5. The corporation against whom the judgment was entered has been formally dissolved or is no longer in business.
6. The judgment is uncollectible as a result of bankruptcy.
7. The county treasurer has exhausted all reasonable efforts to collect the delinquent taxes, penalties, and collection expenses for the period specified in IC 6-8.1-8-2(f) (10 years) without success.

A judgment may be set aside only under a finding entered of record by a court having jurisdiction. [IC 6-1.1-23-12]

SATISFACTION OF JUDGMENT

Payment of delinquent tax judgments and interest shall be made to the treasurer. On a daily basis the treasurer shall enter a satisfaction of all judgments paid in the delinquent tax judgment record maintained in the office of the clerk of the circuit court. The treasurer shall apply the amount so paid to the delinquent taxes, penalties, and collection expenses for which the judgment was entered. [IC 6-1.1-23-13]

County Treasurer's Receipt for Personal Property Tax Judgment, County Form No. 18TJ, is to be used when receiving such payments. All payments should also be recharged to the current tax duplicate.